Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No.1329 of 2001
(Old No. 126/1999)

National Insurance Co. Ltd.
Through its Administrative Officer
Divisional Office, Allahabad

……..Appellant/Opp. Party

Versus

1. Smt. Aila Devi, W/o Rajendra Singh Rana
2. Km. Kavita (Minor) D/o Rajendra Singh Rana, through Mother, Alia Devi, Natural guardian.
3. Km. Anuradha (Minor) D/o Rajendra Singh Rana, through Mother, Alia Devi, Natural guardian.

All are resident of Village- Syansu, Patti Gusain,
Tehsil Tehri District, Tehri Garhwal.

……..Claimants/Respondents

4. Shri Nag Chandra Ramola S/o Shri Kathag Chand
R/o Village Dang, P.O. Bhaldiyana,
Patti Juwa Tehsil Tehri,
District Tehri Garhwal (Driver of Truck).

5. Shri Makhan Singh, S/o Shri Mooli Singh
R/o Hindolakhal, Patti Hinolakhal
Thesil Deoprayag, District Tehri Garhwal (owner of truck)

……. Respondents/Opp. Parties

Date: October 13, 2004

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the appellant against the judgment and award dated 10.11.1988 passed by Shri M.L. Sharma, Motor Accident Claims Tribunal, Tehri Garhwal ***(in short the Tribunal)*** in Motor accident Claims Case No.16 of 1996. The relief claimed by this appeal by the Appellant is to allow the appeal and to set aside the impugned judgment and award passed by the

Tribunal. The Appellant is challenging the validity and correctness of the order of the Court below mainly on the grounds that the Truck was insured only for carrying goods and no one was permitted under the terms of Insurance Policy to sit on the Truck and therefore the deceased was an unauthorized passenger (gratuitous passenger) on the truck. Hence, the insurance company is not liable to pay any compensation and the owner and driver had violated the terms of insurance policy in permitting passenger to sit on the truck.

Brief facts giving rise to the appeal are that the claim petition was filed by the claimants/petitioner Smt. Alia Devi and two others (heirs of the deceased) for grant of compensation of Rs.11,42,000/- due to the death of Shri Rajendra Singh in an accident occurred on 3.12.1995 at about 6:15 p.m. near Chiniyali Saur 200 metres away towards Uttarkashi on the Tehri Uttarkashi main road by Tata Truck No. UP08-1345 driven by its driver rashly and negligently with the allegations that on 03.12.1995 at about 6:15 p.m. vehicle No. UP 08-1345 was coming from Uttarkashi side after unloading the goods. It stopped at the workshop of deceased Rajendra Singh Rana at Barethi. The deceased was a motor mechanic. He asked the driver of the said truck to take the tyre puncture compressor machine for welding upto Chiniali Saur on hire on the payment of Rs.50/-. Deceased loaded the machine in the said truck and sat in the truck with the machine. On reaching just before Chiniali Saur in the truck driven at fast speed, the driver could not control the said truck due to his negligent driving at a turning point and the vehicle went into the Khud side causing the accident. Shri

Rajendra Singh died at the spot and the machine went into the water of River Bhagirathi. The deceased was about –32- years of age at the time of accident. He left the claimant No.1 his wife and No.2 and 3 as his dependents. The deceased was only earning member of the family. He was a motor mechanic running Rana Motor Workshop at Baretni, District Uttarkashi. The claimants have suffered the financial loss for –30- years of active life of the deceased who was contributing Rs.3,000/- per month to the claimants i.e. Rs.10,80,000/-, loss of tyre puncture compressor machine Rs.12,000/-, loss of consortium Rs.20,000/- and loss of love and affection Rs.60,000/-. The petitioners have also claimed Rs.50,000/- on the principle of No Faulty Liability. The driver of the said truck was driving the truck in a rash and negligent manner and same has resulted in the accident. The respondent No.2 is registered owner of the vehicle involved in the accident and the respondent No.1 was the driver of the said truck at the time of the accident. The respondent No.3 is the insurer of the vehicle and is liable to indemnify the liability of respondent No.2.

Opposite Party No.1 Shri Nagchand Ramola has also filed his written statement paper No.24-Kha admitting the factum of accident by stating that the income of the deceased is shown excessive and the compensation claimed is also excessive without any basis. He was driving the truck slowly without any carelessness and negligence. He has also admitted booking the truck by the deceased for taking his compressor machine on hire from Barethi to

Chiniali Saur but die to bursting of tyre, the vehicle became unbalanced and accident has occurred.

Opposite Party No.2 Shri Makhan Singh has also field his written statement paper No.1301 denying all the allegations of the claim petition due to lack of knowledge. It is also stated that he has already sold his vehicle and transferred it to Shri Ganesh Nautiyal on 25.11.1994. the Insurance of the vehicle is liable to make the payment of the compensation to the claimant.

Opposite Party No.3, the National Insurance Company Ltd. has also filed its written statement 27-Kha and the compensation claimed by the petitioner is excessive and imaginary. The driver was not possessing the fitness certificate, registration certificate and valid permit of the vehicle at the time of the accident and thus this contesting opposite party is not liable to make any payment of the compensation to the petitioners.

On the basis of pleadings of the parties, following issues were framed by the Tribunal on 07.08.1997: -

1. Whether the accident had occurred on 03.12.1995 at 6:15 p.m. near Chiniali Saur on main road Tehri-Uttakashi by truck No.UP 08-1345 driven by its driver rashly and negligently resulting in the death of Sri Rajendra Singh Rana? If so, its effect?
2. To what amount of compensation are the petitioners entitled and for which of the opposite parties?
3. Any other relief to which the petitioners are entitled in the present case?

On the basis of the evidence adduced by the claimants orally as well as documentary, the learned Tribunal came to the conclusion that the accident has occurred on 03.12.1995 at 6:15 p.m. on Tehri-Uttarkashi Road by Truck No. UP 08-1435, driven by its driver rashly and negligently resulting the death of the Shri Rajendra Singh Rana and awarded the compensation of Rs.2,79,000/-.

We have heard Shri Lalit Belwal, learned counsel for the Appellant and Mr. Rajendra Dobhal learned counsel for Respondent. The counsel for the appellant vehemently argued that the Truck was insured for carrying goods and no one was permitted under the terms of insurance policy to sit on the truck and therefore the passengers on the truck was unauthorized (gratuitous). Hence, the Insurance Company is not liable to pay the compensation. It is noteworthy to mention here that the Insurance Company has not pleaded in his written statement that the deceased was a gratuitous passenger because there was no pleading of the Insurance Company. Hence the learned Tribunal did not frame any issue on this point. The accident occurred on 03.12.1995. The Section-147 has been amended by the Act No.54 of 94 w.e.f. 14.11.1994 and Section 147 B (i) ***"injury to any person including owner of the goods or his authorized representative carried in the vehicle".*** It is an admitted fact that the deceased was a motor mechanic. He asked the driver of the said truck to take the tyre compressor for welding upto Chiniali Saur on hire on the payment of Rs.50/-. The deceased loaded the machine in the said truck and sat in the truck with the machine. It is also admitted by the Opposite Party No.1 Shri Nagchand Ramola

that booking of the truck by the deceased for taking his compressor machine on hire from Barethi of Chiniali Saur but due to the bursting of the tyre, the vehicle became unbalanced and the accident has occurred. In view of the Apex Court Judgment, Ramesh Kumar V/s National Insurance Company Limited and others reported in 2001 (3 TAC-639) Supreme Court, the liability of Insurance Company under the new Act of 1998 compensation claimed on account of death of injury on owner of the goods or his representative is of the Insurance Company." The deceased was admittedly the owner of the goods and he was not a gratuitous passenger. The learned Tribunal rightly hold that the dependents of the deceased are entitled for the compensation.

Neither the application U/s-170 was moved by the Appellant before the Tribunal nor the permission was granted U/s 170-B by the Tribunal to the Insurance Company/Appellant. The liability grounds provides that the appeal by the Insurance Company can be filed only on limited grounds and the grounds of challenge cannot be enlarged as envisaged in Sub-section –149 (2) of the Motor Vehicles Act. The Apex Court in the case of ***"National Insurance Company Ltd. Chandigarh Vs. Nicolleta Rohtagi and others" [(2002) 7, Supreme Court Cases, 456]*** has observed that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".*** Thus, in view of the law laid down by the

Apex Court reported in ***(2002)7, S.C.C. 456 (supra),*** which is fully applicable in the present appeal, none of the contention raised on behalf of the appellant is tenable and has to be ignored outright.

Thus, in view of the aforesaid law laid down by the Apex Court, the appeal filed by the Appellant/Insurance Company has no force. The appeal has no merit and is dismissed. The order impugned in the order is upheld. No order as to costs. Amount deposited in the appeal, shall be remitted to the Tribunal concerned within a period of three months.

(B.S. Verma, J.) (P.C. Verma, J.)

Rajeev Dang